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May 31, 2018

BY ECF

Hon. Colleen McMahon
United States District Court
Southern District of New York
500 Pearl Street, Room 2550
New York, New York 10007

MEMO ENDORSED

*DK - And
This Court will have 30 days
thereafter to respond.*

USDC SDNY
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Re: *James Kevin Kergil v. USA*, Nos. 17-cv-4675 (CM), 12-cr-152 (CM) (SDNY)

Dear Judge McMahon:

I received the Court's orders issued yesterday and respectfully request until July 9 to file supplemental 28 U.S.C. § 2255 papers on Kevin Kergil's behalf.

I apologize for not updating the Court sooner. Kergil retained me in late 2017 to handle both his pending 18 U.S.C. § 3582(c)(2) appeal and the subject § 2255 motion. I initially turned to the appeal due to an approaching deadline.

After reviewing the record and conducting extensive legal research, I advised Kergil to withdraw the § 3582 appeal and focus exclusively on amending the § 2255 motion. Upon further consultation, however, I drafted an appeal brief pressing the strongest argument I could devise: that Congress had violated separation of powers principles by impermissibly delegating legislative authority to the Sentencing Commission via 18 U.S.C. § 3582(c)(2) and 28 U.S.C. § 994(u). Ultimately, though, Kergil opted not to file that brief, submitting a different one through separate counsel instead.

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I've since turned to the § 2255 motion at Kergil's continued request, but intervening deadlines – major Second Circuit briefs due May 11 and 18 and a substantial sentencing submission filed May 29 – have kept me from completing his supplemental papers more expeditiously. Accordingly, I respectfully request until July 9 to conclude that task, and appreciate any further indulgence and consideration the Court might extend in this regard.

Respectfully,

/s/

Marc Fernich

cc: AUSA Eun Young Choi (ECF)